

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 232 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

STATE OF GUJARAT

Versus

KAMALSHA G FAKIR

Appearance:

MR DN PATEL, ADDL. PUBLIC PROSECUTOR for appellant

MR RA MISHRA for Respondent No. 1, 2, 3, 4, 5

CORAM : MR.JUSTICE B.C.PATEL

Date of decision: 28/08/98

ORAL JUDGEMENT

State has preferred this appeal against the order of acquittal recorded by Chief Judicial Magistrate, Junagadh in Criminal Case No. 3049 of 1990 on 19.2.1990 wherein the accused were tried for offences punishable under sections 420, 465, 468, 477.A, 471 and 120B of the Indian Penal Code.

2. Brief facts as it emerges from the record are as

under:

2.1 There was a Trust known as "Madarshah" at Junagadh, which was registered under the provisions of the Bombay Public Trust Act. Land admeasuring 2 Acre 15 Gunthas bearing Survey No. 204 belonged to the Trust. One agreement to sale was executed for the aforesaid land on 30.4.1973 and original accused No.1 executed a Power of Attorney in favour of the accused No.2 for completion of the transaction. An application was made to the Charity Commissioner on 18.4.1974 interalia praying that the land is required to be disposed of as the Trust is indebted to the tune of Rs.20,000/-, i.e. the amount spent for construction of shops. It appears that the Charity Commissioner, by order dated 7.10.1974, granted permission and fixed the upset price of the land at Rs.30,000/- with a condition that the same should be sold in public auction. Charity Commissioner was informed that the auction was held on 7.11.1974 and one Shantaben Jamnadas, original accused No.4, has offered Rs.32,551/- for the said land. Along with the letter informing the said facts, necessary papers were forwarded. On 21.12.1974, inquiries were made. Ultimately, on 21.3.1975, the Charity Commissioner granted permission to execute the documents in favour of Shantaben Jamnadas, original accused No.4. It appears that Ranchoddas, Secretary of Sadhu Samaj, Junagadh submitted an application interalia pointing out that there was no public auction and fraud has been perpetrated by the accused persons. The Charity Commissioner, who was in charge at the relevant time, recorded statement of certain persons, and thereafter filed a complaint before the police and the accused were charge sheeted after completion of investigation. The trial Court, on appreciation of evidence on several aspects, acquitted the accused persons.

3. Mr. Patel, learned Additional Public Prosecutor pointed out relevant evidence. He made an attempt to point that infact there was no public auction and the shops were not constructed by the Trust as alleged. He further submitted that by making false representation that shops were constructed by the Trust, the Charity Commissioner was persuaded to grant permission, and though there was no public auction, the Charity Commissioner was led to believe that there was public auction, and thereby these accused persons persuaded him to grant the application for executing the sale deed.

4. Mr. Mishra, on the other hand submitted that the prosecution has failed to produce any evidence to show that the shops were not constructed by the Trust. He

further submitted that the evidence indicates that a public auction infact took place and the land was disposed of at a higher price than the upset price fixed by the Charity Commissioner; Hence there is no loss to the Trust. He further submitted that on appreciation of evidence, the learned trial Judge has acquitted the accused in the year 1990 and after a lapse of nearly eight years, this Court should not interfere with the order of acquittal.

5. Learned APP Mr. Patel read the evidence, but he was not in a position to point out from the evidence on record that the shops were not constructed at the cost of the Trust but at the cost of the tenants. Tenants are examined in this case and they have not stated that they paid the money for construction. Mr. Patel, after going through the evidence, fairly conceded that there is no evidence from which a conclusion can be drawn that the Trust has not spent money for construction of shops. He further submitted that even if it is presumed that the shops were constructed, public auction was required to be held as per the order passed by the Charity Commissioner. On this point, the prosecution case is not supported by the witnesses. On the contrary, witnesses have stated that public auction was held. Gopaldas PW.2 has only stated that in his presence, no public auction took place. Ibrahim, PW.5 has not supported the prosecution. Mohanlal PW.6 has specifically stated that public auction was held and 15/20 persons participated in the said public auction. He further stated that he himself bid for the land. Chottalal PW.7, Anantkumar PW.8, and Nanumal PW.9, who are tenants, have not stated in their deposition that the shops were constructed by them. Bikansha PW.10 has stated in his deposition that the tenants constructed the shops, but he has no personal knowledge about the same. In view of this set of evidence, Mr. Patel was not in a position to point out that the view taken by the trial Court could not have been taken on the evidence on record or that the view taken by the trial Court is perverse.

6. Charity Commissioner fixed the upset price at Rs.30,000/- and the land was transferred at a price higher than the upset price fixed by the Charity Commissioner. Hence, there is no loss to the Trust.

7. After having gone through the records and hearing the learned APP, this Court is in agreement with the views arrived at and the findings recorded by the trial Court. This Court is, therefore, not discussing the evidence of each witness in detail in view of the

observations made by the Honourable Supreme Court in the case of STATE OF KARNATAKA VS. HEMAREDDY reported in AIR 1981 SC 1417, which reads as under:-

" This Court has observed in Girija Nandini Devi v. Bigendra Nandini Choudry (1967) 1 SCR 93 : (AIR 1976 SC 1124) that it is not the duty of the appellate Court when it agrees with the view of the trial Court on the evidence to repeat the narration of the evidence or to reiterate the reasons given by the trial Court expression of general agreement with the reasons given by the Court the decision of which is under appeal, will ordinarily suffice"

8. Moreover, this is an appeal against the order of acquittal, The Court has carefully gone through the evidence which was suggested to be read by learned Additional Public Prosecutor. In an appeal against the order of acquittal, though there is no limitation upon the power of the High Court to review at large the evidence upon which the acquittal was founded and to reach to a conclusion that the order of acquittal should be reversed, in exercising that power and before reaching its conclusions upon fact, the High Court should and will always give proper weight and consideration to such matters as (1). the view of the trial judge as to the credibility of the witnesses; (2). the presumption of innocence in favour of the accused, a presumption certainly not weakened by the fact that he has been acquitted at the trial; (3). the right of the accused to the benefit of any doubt, and, (4). the slowness of an appellate court in disturbing a finding of fact arrived at by a judge who had the advantage of seeing the witnesses (See AIR 1934 PC 227).

In the result, the appeal fails, and is hereby dismissed.

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